prices. OPC suggests that in the event the Commission finds that the arbitration parties have failed to present costing and pricing plans which are just, reasonable, nondiscriminatory and consistent with the Act's mandate, the Commission should adopt the FCC default proxy rates as experimental, interim rates, pending a thorough examination by the Commission of costing and pricing in a competitive environment. OPC acknowledges that the FCC default proxy values do not have the legal effect of a regulation given the Eighth Circuit's stay order, but suggests that these values may be used by the Commission as evidence. OPC notes that the proxy rates are estimates based upon various cost studies which were submitted to the FCC in its rulemaking docket.

The Commission finds that sales costs are a part of marketing costs. The Act provides that "a state commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." § 252(d)(3). The Commission finds that the information presented by the arbitration parties on avoided costs is inadequate; insufficient data exist on all avoided costs such that the Commission is prevented from calculating wholesale costs which are just, reasonable, nondiscriminatory, and consistent with the Act's mandate. Thus, the Commission determines that the best evidence available to it in this proceeding is the FCC's presumptive avoided costs. The Commission finds that sales expenses, Account 6612, are 90 percent avoided when GTE acts as a wholesale provider of resale services.

7. What percentage of uncollectible expenses is an avoided cost?

GTE contends that its avoided cost study provides the percentage of uncollectible expense which is avoided, based on its analysis of uncollectible activity. GTE also declares that Sprint has admitted uncollectible expense will not be avoided in the wholesale market.

Sprint argues that retail uncollectible expenses relating to wholesale services sold to Sprint are avoidable costs, since Sprint will be responsible for all charges. Sprint also claims that the Commission must adopt the same percentage of avoided expenses for each of the disputed accounts in this proceeding as it adopted in the AT&T/GTE Arbitration.

OPC takes issue with GTE's position, noting that opportunity costs translate to imbedded costs, and have no place in the calculation of resale prices. OPC suggests that in the event the Commission finds that the arbitration parties have failed to present costing and pricing plans which are just, reasonable, nondiscriminatory and consistent with the Act's mandate, the Commission should adopt the FCC default proxy rates as experimental, interim rates, pending a thorough examination by the Commission of costing and pricing in a competitive environment. OPC acknowledges that the FCC default proxy values do not have the legal effect of a regulation given the Eighth Circuit's stay order, but suggests that these values may be used by the Commission as evidence. OPC notes that the proxy rates are estimates based upon various cost studies which were submitted to the FCC in its rulemaking docket.

The Commission finds that uncollectible expenses are a part of collection costs. The Act provides that "a state commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." § 252(d)(3). The Commission finds that the information presented by the arbitration parties on avoided costs is inadequate. Because insufficient data exist on all avoided costs, the Commission cannot calculate wholesale costs which are just, reasonable, nondiscriminatory, and consistent with the Act's mandate. Thus, the Commission determines that the best evidence available to it in this proceeding is the FCC's presumptive avoided costs. The Commission finds that, because Sprint runs the risk of nonpayment as to its basic local service customers, GTE's uncollectible expenses, Account 5301, are avoidable at the ratio of direct avoidable cost to indirect costs which is 14.36 percent.

8. What input and loading assumptions should be used in establishing the cost of interconnection and unbundled network elements, and what prices should be the resulting prices?

GTE asserts that the Commission must adopt its proposed prices for unbundled network elements and interconnection because Sprint presented no evidence of GTE's costs, nor did it proffer proposed rates. GTE states that the Commission may not adopt the rates in the AT&T/GTE arbitration case because those rates are based in part on FCC default proxy values which are subject to the Eighth Circuit's stay order. Additionally, proxy rates could only be considered in the absence of any evidence of costs and pricing in the record in the particular arbitration proceeding in which those proxies are proposed. GTE declares that its proposed prices are derived from cost studies possessing all of the key attributes of a proper study based on forward-looking, long run incremental costs.

GTE argues that its cost studies look at incremental costs, follow the principles of cost causation, include both volume-sensitive and volume-insensitive costs attributable to the element in question, exclude common or shared costs, are forward-looking, are based on the current network design of GTE's actual network (with the exclusion of obsolete technology), and conservatively exclude adjustments to depreciation and cost of capital, which would have reflected the likelihood of technological innovation and competitive pressures.

Further, GTE contends that use of the M-ECPR methodology is appropriate, as it does not allow GTE to charge a price for an unbundled element that exceeds the element's stand-alone cost. Nevertheless, GTE argues that M-ECPR does not allow GTE to recover its full opportunity costs, and thus will create stranded investment which GTE is entitled to recover as a matter of constitutional law. GTE thus proposes the addition of a competitively neutral end-user charge. GTE also stresses that the Commission must take into account the costs of any subsidies used to support universal service in setting GTE's rates for interconnection and unbundled elements; must allow GTE to recover 100 percent of its access charges, including residual interconnection charges (RIC) and common carrier line charges (CCLC) for both interstate and intrastate calls when Sprint uses GTE's facilities in an unbundled environment; and may not utilize the "uneconomically-sound" uniform markup over TELRIC approach advocated by Sprint.

Sprint states that the Commission should adopt a TELRIC methodology to be used in setting prices for interconnection and unbundled elements, similar to that described in the FCC Order and FCC Rules. With respect to GTE's cost model, Sprint alleges that because of GTE's failure to provide adequate supporting documentation or explanatory statements with its cost studies, and because of the time limitations, neither Sprint nor the Commission has had sufficient opportunity to review GTE's cost model thoroughly to make an informed evaluation of its appropriateness. Sprint suggests that the Commission set interim rates and conduct a further proceeding for the purpose of establishing permanent rates.

Sprint also asserts that it should be allowed to participate in that review process.

Notwithstanding its disclaimer that it was unable to review GTE's cost model, Sprint makes several observations concerning the resulting cost studies. Sprint notes that the expenses GTE has historically incurred are based upon a company operating in a noncompetitive environment, and therefore modifications are required. Cost recovery based entirely on past network design and technology would result in inefficient pricing, to the detriment of competitive entry. GTE's M-ECPR-based methodology of computing common costs should be rejected, since it assumes that 1995 revenues equal forward-looking common costs in a market where competition has not developed yet. This violates the Act because it sets costs based upon a reference to rate-of-return information.

Sprint also criticizes the M-ECPR method as not producing cost-based rates, because this pricing methodology uses prices set by a market which does not exist, a fatal flaw. Sprint also suggests that a uniform markup be used to recover common costs, so that GTE will recover the same contribution from all elements, regardless of competitive pressures for those elements. In addition, Sprint argues that the Commission must reach the same results as it reached in the AT&T/GTE Arbitration with regard to a number of issues, including the following: use of same general methodological considerations, specific cost study methodologies, the level of historic data allowed in the TELRIC studies, the cost of capital, the depreciation lives, the annual cost factors, the specific TELRIC studies and inputs, the joint and common costs incurred, volume discounts, and the rates or rate methodology used for setting interim proxy rates.

OPC urges the Commission to reject GTE's approach, which it believes uses prices derived in part from rate-of-return regulatory rates, contrary to the directives of the Act. OPC explains that the costs of elements and service are deducted from the current revenues derived from the services and elements, which are in turn derived from rates produced under the rate-of-return regulatory system. In addition, OPC challenges GTE's proposed surcharge to recover GTE's opportunity costs. OPC maintains that a surcharge on consumers to fund GTE's lost monopoly profits and revenues is improper.

The key issue here, as it is in most of the issues in this proceeding, is how to define cost. GTE's definition is contrary to the Act. *See* § 252(d)(1)(A)(i). GTE's methodology is tainted by its underlying assumptions, including the use of 1995 revenues derived from a rate-of-return regulatory environment. Sprint did not provide any costing models, inputs, or proposed prices of its own. While the Commission acknowledges the reality of the time constraints, the Commission notes that AT&T was faced with the same time constraints as Sprint. Since the Commission cannot accept GTE's proposed prices, and Sprint did not propose any prices, the Commission will adopt, on an interim basis, the same prices which it adopted in the AT&T/GTE Arbitration. There was no evidence that it would cost GTE any more to provide unbundled elements to Sprint than it would to AT&T, and there was some evidence that the cost, in fact, would be the same. However, Sprint is not a party in Case No. TO-97-63, and will not be allowed to participate in any further proceeding in that case. If Sprint is content to "hitch a ride" with AT&T, then it must rely on AT&T to adequately protect Sprint's interests.

The Commission finds that just and reasonable interim rates for interconnection and unbundled network elements are listed in Attachment B to this Arbitration Order, entitled "Unbundled Network Elements -- Interim Rates." The parties should prepare an interconnection agreement which incorporates these rates.

9. What rates are appropriate for transport and termination of local traffic?

GTE states that rates for transport and termination of local traffic should be based on each entity's own costs. GTE proposes to use its interstate access rates as the basis of local termination, in order to avoid the possibility of an arbitrage situation occurring. GTE explains that if the local interconnection terminating rate is unreasonably low, it would be very easy for new entrants to circumvent access charges by terminating interstate and state interLATA traffic, as well as local traffic, to GTE's network.

Sprint agrees with GTE's use of TELRIC as the appropriate cost methodology, but disagrees with GTE's input and loading assumptions, and resulting prices. Sprint claims that GTE has agreed to the use of a bill-and-keep mechanism for interim pricing of transport and termination services provided by GTE, and has further agreed that if traffic is out-of-balance by more than 10 percent, there should be a mutual compensation arrangement. However, Sprint disagrees with GTE's proposed use of its interstate access rates for the out-of-balance portion of transport and termination of local traffic. Sprint notes that GTE's termination rate for interstate termination end office switching is $.0121529 per minute of use. Sprint points out that under GTE's own cost studies, the TELRIC for terminating local traffic is $.0025226, and thus GTE's proposed termination rate for out-of-balance traffic is in excess of 400 percent of cost, a windfall to GTE.

Sprint also accuses GTE of ignoring the Act's distinction between reciprocal compensation for local traffic and the ILECs' ability to charge access rates for long distance service, and submits that this is not the proper forum for GTE to revisit the policy decision of Congress to require reciprocal compensation to be cost-based. Similarly, Sprint also disputes GTE's position that interim rates for out-of-balance traffic should not be symmetrical. Sprint claims this is inconsistent with the reasoning in the FCC's Order, which supports symmetrical rates. Sprint also claims that the ILEC's cost serves as a reasonable interim rate for transport and termination on the CLEC's network, as there are no cost studies available to determine the cost of transport or termination on a presently nonexistent CLEC network. Finally, Sprint urges the Commission to adopt the same decision as it adopted in the AT&T/GTE Arbitration.

OPC contends that the prices GTE proposes are improperly derived in part from rate-of-return regulatory rates. OPC recommends that the Commission use the FCC's proxy default values as evidence of reasonable rates for transport and termination of local traffic.

The Commission finds the record unclear as to whether the parties have agreed to a bill-and-keep mechanism. The Commission finds that a bill-and-keep mechanism is, at least initially, a reasonable resolution of this issue. If the parties decide to implement a bill-and-keep compensation method for transport and termination of local traffic, the bill-and-keep method should be used for an initial period of 12 months, with a 10 percent threshold to determine the out-of-balance portion of traffic. The parties should adopt a methodology for determining the comparative levels of traffic on the two networks during the 12-month period. Should the parties find that a periodic true-up is required based on the 10 percent threshold, or that a bill-and-keep mechanism is not appropriate, the Commission finds that it would be reasonable to require the use of GTE's interstate rates for transport and termination on an interim basis. For dedicated transport the applicable rates would be the interstate dedicated switched transport rates. For common transport the applicable rates would be the interstate direct trunked transport rates.

Use of GTE's interstate rates for transport and termination on an interim basis is both reasonable and appropriate under the circumstances with which the Commission has been presented. The Commission finds that the rates proposed by GTE are not cost-based, and that Sprint has not presented suitable rates of its own, except to allude to the AT&T/GTE Arbitration. GTE's interstate rates for transport and termination were restructured by the FCC to be aligned with economic costs, and have been under price cap regulation at the federal level. If necessary, the Commission will adopt a costing methodology to set permanent prices at a later date. In addition, the Commission notes that use of GTE's interstate rates for transport and termination shall be reciprocal, with each party paying to the other party that amount. However, compensation for transport and termination should be based upon those facilities which are actually used by the carrier, i.e., rates should be tied to the element used, and not the service performed. If GTE, by virtue of being the incumbent, only requires the use of end office switching in terminating a call to a CLEC, then GTE should only pay for the use of the end office switch.

10. What method should be used to price interim number portability and what specific rates, if any, should be set for GTE?

GTE asserts that it should recover its total costs for providing interim number portability (INP). GTE posits that new entrants can allocate or recover their costs as they choose. GTE proposes that the costs for INP be determined based on the network in place today, and allow for capital, transport and termination, and opportunity and investment costs. Specifically, GTE proposes that its existing tariff rates for number portability charges be adopted. Where no applicable tariff rates exist, GTE suggests that the Commission adopt its proposed service provider number portability charges, which are set forth in Attachment 3 to GTE witness Trimble's prefiled testimony, since these charges are TELRIC-based and reflect GTE's costs.

Originally, Sprint's position was that INP should be priced according to FCC pricing principles to ensure that costs are allocated on a competitively neutral basis. Sprint cited § 251(e)(2) of the Act, and ***In the Matter of Telephone Number Portability***, FCC Order, CC Docket 95-116 (June 27, 1996). In its brief Sprint states that the Commission must adopt the INP rates which were adopted in the AT&T/GTE Arbitration. In that case, the Commission ordered AT&T and GTE to submit their proposed rates for INP solutions, along with supporting documentation, including cost data, methodology description, assumptions and rationale.

OPC maintains that INP should be priced on a competitively neutral basis. OPC cites § 251(e)(2), and ***In the Matter of Telephone Number Portability***, FCC Order, CC Docket 95-116 (June 27, 1996).

Neither GTE nor Sprint has presented adequate evidence of what the costs of implementing INP will be. The Commission finds that recovery of the costs for INP should be made in a competitively neutral manner from all telecommunications carriers. ***See*** § 251(e)(2). Assigning 100 percent of the costs to either party would be inequitable. The Commission further finds that the costs of INP are unclear, but not believed to be great. The FCC Order in Docket 95-116, which established a cost recovery mechanism, is ambiguous and currently under appeal. The Commission is therefore reluctant to use this FCC Order as the basis of its decision. The Commission finds that Sprint and GTE should track the costs which they consider attributable to INP, so that the issue can be revisited when the question is clearer, particularly after the FCC clarifies its requirements on cost recovery. However, no commitment is made for retroactive cost recovery, as it is unclear whether retroactive charges should or can be assessed.

11. What GTE services should be required to be made available for resale at wholesale rates?

GTE agrees to make all of its retail services available for resale at wholesale rates, except for the following: (1) GTE will not offer for resale at wholesale rates below-cost services, promotional offers, public pay telephone services, and semipublic pay telephone services; and (2) GTE will make available for resale without a wholesale discount nonrecurring charge services, any services already offered on a wholesale basis, Operator Services, and Directory Assistance services. GTE argues that local residential service, including flat, measured, and lifeline options, is a below-cost service, which in the past has been subsidized through higher-margin services such as vertical services and toll service. GTE contends that it will no longer be able to subsidize the cost of local residential service since Sprint can be expected to purchase vertical services from GTE on an unbundled basis, which would be less expensive, rather than on a resale basis, and, with the advent of equal access, Sprint can be expected to compete for the toll market. Moreover, GTE contends that allowing CLECs to buy services below their economic costs will discourage the development of facilities-based competition.

The parties agree that GTE should not be required to resell promotions of 90 days or less at a wholesale discount from the promotional rate, but rather at a wholesale discount from the ordinary rate for the retail service. GTE claims that with regard to other promotions, it should not be required to offer these promotions on a wholesale basis because it would not be able to differentiate its retail services from those of competing carriers. GTE also asserts that there is no procompetitive reason to require GTE to provide resale of promotions at a discount, since the service is sold to the CLEC at wholesale, and the CLEC sets the retail price for that service, and could presumably offer its own promotions. Further, GTE asserts that promotions will be discouraged, which would limit the choices available to consumers. GTE will have no incentive to offer promotions lasting longer than 90 days, since it would be required to offer the promotion to CLECs at a wholesale discount from the promotional rate, and promotions which last 90 days or less may be too expensive to design, market, advertise and implement.

In addition, GTE avers that public and semipublic customer-owned pay telephone (COPT) lines are not covered by the resale provisions of the Act because they are not offered to end users as retail service offerings. These services are provided below cost, and GTE cannot sustain the necessary maintenance and collection activities without subsidies from toll collections. Finally, GTE states that Sprint may only resell services to that class of customer obtaining identical services from GTE, so that Sprint should not be permitted, for example, to sell residential service to business customers.

Sprint contends that the Act provides no exemption to the requirement that GTE make available for resale all telecommunications services offered at retail. Sprint argues that GTE improperly relies on a section of the FCC Rules which allows an ILEC to propose restrictions on resale as a basis for justifying GTE's refusal to make certain services available for resale, and which would create an unlawful prohibition rather than a restriction. With regard to GTE's argument that the Commission may not require it to sell below-cost services in violation of the takings clause of the U.S. Constitution, Sprint points out that this would require the Commission to interpret the U.S. Constitution and review the Act in a manner which is beyond the jurisdiction of this Commission. Sprint also claims that the wholesale discount must apply to all services unless there, in fact, are no costs avoided when GTE provides that service to a CLEC. Sprint also separately discusses residential services, promotional offerings, public and semipublic pay telephone lines, nonrecurring service charges, private line services tariffed under the Special Access tariff, and COCOT (customer-owned coin-operated telephone) coin and coinless lines, but the thrust of Sprint's arguments is the same: that the Commission must decide these issues in exactly the same manner as it decided the AT&T/GTE Arbitration.

OPC's position is that all services should be available for resale. OPC maintains that there is no substantial and competent evidence that certain services should not be available for resale because it is not economically feasible or will impair the network integrity. OPC alleges that this is merely "propaganda" of the incumbent carrier, and stresses that whether or not an element should be offered for resale is not the sole decision of the incumbent.

The goal of a competitive environment, as well as the plain language of the Act, requires GTE to make available for resale at wholesale rates all services it provides at retail to subscribers who are not telecommunications carriers. The non-stayed provisions of the FCC Order make it clear that promotions of more than 90 days, below-ccst services, grandfathered services, contracted, and customer-specific services must be made available for resale. FCC Order ¶¶ 871, 948, 956 and 968. Short-term promotions of less than 90 days must also be made available for resale, but should not be subject to the wholesale discount. With regard to promotions over 90 days, without the requirement that these promotions be offered at a wholesale discount, an ILEC could treat the promotion as essentially a rate change, thereby circumventing the requirements of the Act. The Commission finds that GTE must make available for resale all the services it provides at retail to noncarrier telecommunications subscribers. The Commission also finds that GTE need not offer a discounted wholesale rate for promotions of less than 90 days' duration.

12. **Should GTE be required to offer for resale at wholesale rates services to the disabled, including special features of that service such as free Directory Assistance service calls, if that service is provided be GTE?**

GTE asserts that it should not be required to offer for resale services designed for the disabled because such services are a below-cost residential service. GTE's position is that mandated social programs such as those for the disabled, which provide for discounts or special rates, are the responsibility of the CLEC, and it is the CLEC's responsibility to verify and document its own customers' status. Further, GTE suggests that in the event the Commission decides it should be required to resell these services, it should not be required to resell at a price less than the retail residential rate then in effect. Instead, Sprint should collect from any subsidy fund the difference between this rate and the price its disabled customer pays, as otherwise GTE would retain the administrative burden of collecting such funds when it is Sprint's end user that is the cost-causer.

Sprint argues that the Act permits no exceptions to the duty imposed on GTE to offer all available retail services to Sprint, citing § 251(c)(4)(A). Sprint maintains that GTE's refusal is unreasonable and discriminates against new entrants by disallowing competition at parity with GTE. Sprint references the Commission's decision in the AT&T/GTE Arbitration, in which the Commission found that GTE should make available for resale services for the disabled, including free Directory Assistance, without restriction, although at a zero discount rate. In the alternative, Sprint suggests that if the Commission allows GTE to exclude these social services from resale, the cost of the social programs be excluded from GTE's costs as avoided costs, and the appropriate adjustments be made to GTE's wholesale rates.

OPC states that the Act does not exempt services for the disabled, and thus there should be no restrictions on the sale of these services. OPC adds that the wholesale price should reflect the retail price less the avoided costs of offering these types of services.

The Commission finds that GTE should make available for resale services for the disabled, including free Directory Assistance, without restriction. § 251(c)(4)(A). To do otherwise would discriminate against both CLECs and end users, as CLECs would be deprived of the opportunity to compete for a whole category of customers, and a whole category of customers would be deprived of the choice of a local service provider. However, the Commission finds that no discount should be applied to these services, as the services are already priced at a significant discount. GTE's argument that if it is required to resell services for the disabled, it be allowed to resell these services at a price at least equal to the current retail residential rate is disingenuous, since the "resale" of these services at the retail residential rate is, in effect, a refusal to resell the services. Nevertheless, the Commission agrees that Sprint should be responsible for verifying the eligibility of its customers. It can then submit to GTE as part of its request for the services the appropriate documentation, which would allow GTE to continue to collect the difference in the cost of providing the service from any subsidy funds available. This would present no greater burden on GTE than exists at present, and would maximize the administrative efficiency of subsidy funds.

13. What resale restrictions should be permitted, if any?

GTE's arguments are essentially a reiteration of its position with regard to Issue 11, and need not be repeated here.

Sprint asserts that resale restrictions and conditions would probably have an anticompetitive effect inconsistent with the goals of the Act. The Act and the FCC Order prohibit cross-class selling of residential services to nonresidential end users, and cross-class selling of means-tested services. Sprint submits that these are the only resale restrictions which the Commission can allow since GTE failed to provide evidence which would reasonably justify any other sale restrictions. In addition, Sprint argues that the Commission must decide this issue consistent with its decision in the AT&T/GTE Arbitration.

OPC claims that the only proper restrictions on resale are those to prevent cross-class restrictions on the resale of residential and low-income customer services to business class or other nonqualifying customers.

The Act prohibits unreasonable or discriminatory restrictions on the resale of services. The Commission finds that the only proper restrictions on resale are those to prevent cross-class restrictions on the resale of residential and low-income customer services to business customers or nonqualifying customers. § 251(c)(4); 47 C.F.R. §§ 51.603, 51.609 (1996). Special restricted educational services should also be limited to eligible educational institutions as well.

14. Should each and every retail rate have a corresponding wholesale rate?

GTE maintains that certain of its services are already priced at nonretail prices, and that these services should not be resold with a corresponding wholesale rate since to do so would mandate a second discount -- a result which is contrary to Act's requirement that resale prices be set at reasonable levels. GTE also submits that neither the Act nor the FCC Order requires that the wholesale discount be the same for all resale services. Services which GTE contends are currently priced at a wholesale level include Operator Services (OS), Directory Assistance (DA), Nonrecurring Charge (NRC) Services, and existing Individual-Based Contracts (ICBs). GTE further stresses that Sprint has not rebutted GTE's evidence that these services are currently priced on a wholesale basis.

Sprint maintains that the Act requires each retail service, which includes OS and DA, to be offered for resale by GTE, and that each service therefore have an avoided cost wholesale rate, citing to § 251(c)(4)(A) of the Act.

OPC proposes that GTE should establish a wholesale rate for every retail rate, based on avoided cost. However, in the interim, OPC suggests that a resale discount can be used to approximate avoided costs and to allow new entry wholesale costing.

Under the heading "Additional Obligations of Incumbent Local Exchange Carriers," the Act provides as follows: "(4) Resale.--The duty--(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; . . ." § 251(c)(4)(A). All the services listed by GTE are sold to subscribers who are not telecommunications carriers. The Act does not appear to make an exception for retail services which the ILEC claims are already priced at wholesale rates. The Commission is persuaded that the goal of a competitive environment, as well as the plain language of the Act, therefore requires GTE to make available for resale at wholesale rates all services it provides at retail to subscribers who are not telecommunications carriers.

15. What authorization is required for the provision of customer account information to Sprint?

GTE asserts that in order to transfer a customer's service to Sprint, Sprint must first provide GTE with a written end user authorization in the form of a letter of authorization (LOA), or that Sprint provide GTE with a list of all the services the customer wishes to have transferred to Sprint. In support of its position, GTE states that such customer data is customer proprietary network information (CPNI), which cannot be disclosed without a written request from its customer. GTE maintains that processing transfer requests on an "as is" basis would in effect result in the disclosure of this proprietary information. Instead, GTE suggests that Sprint's marketing personnel ask customers for a list of the services and features subscribed to, and confirm availability from SAG (Street Address Guide) and Product and Service Guide. GTE also argues that converting accounts "as is" will discourage communication with the end user and encourage slamming. In addition, GTE notes that the FCC is currently undertaking a rulemaking to determine the appropriate processes for protecting CPNI when a customer changes local service providers. CC Docket No. 96-115.

Sprint's position is that § 222(d) of the Act provides an exception which allows the disclosure of a customer's service record for the purpose of enabling the new carrier to provide service to that customer. Sprint argues that GTE should not refuse to execute an "as is" change service order for a customer switching to Sprint local service. §§ 222(d), 251(c)(4); FCC Order ¶¶ 516-523. Sprint suggests that GTE's position is not well-founded, since Sprint does not seek proprietary network information regarding GTE's customers, but rather account information regarding GTE's former customers who have become Sprint customers. In addition, Sprint acknowledges that the FCC is currently undertaking a rulemaking regarding the protection of CPNI, but urges the Commission to make a determination on this issue because of the significant time delay which may occur before an FCC rulemaking is in place, and because the primary focus of the rulemaking is on the use of CPNI for purposes of marketing or providing other types of service, and therefore the rulemaking would not necessarily address the specific issue raised in this proceeding.

OPC's position is that the ILEC should not release customer account information to any third party, unless authorized by the customer. However, this nondisclosure of information should not serve as an excuse or obstacle to timely transfer of service between local exchange companies.

The FCC Order concludes that the ILEC's Operations Support Services (OSS) are subject to nondiscriminatory access under § 251(c)(3). The Commission agrees with the FCC's interpretation. The ILEC must provide the same, nondiscriminatory access to OSS for pre-ordering, ordering, provisioning, maintenance and repair, and billing as the LEC provides itself. This includes information regarding the facilities and services assigned to individual customers. Requiring Sprint to have written authorization to access customer information would be discriminatory unless GTE requires written authorization for itself. Any additional requirement would be discriminatory and could be a barrier to entry.

The Commission is unpersuaded by GTE's arguments. GTE attempts to wield as a sword, for anticompetitive and anticonsumer purposes, the general requirement that CPNI not be disclosed. One of the purposes of generally requiring written authorization for disclosure of CPNI is to protect the customer. Under GTE's interpretation that protection is turned against the customer and used to make it more cumbersome and burdensome for the customer to change local service provider (LSP). For example, customers may not be aware of every service they subscribe to or what those services are called, or may subscribe to a package of services. Yet if customers cannot remember all of the features they have subscribed to, they would be required to either sign a written letter of authorization or to contact GTE to obtain that information. In addition, a very disturbing possibility exists that a customer could continue to be provided service by GTE after the customer had requested to be changed over to Sprint, in the event the customer forgot to list a specific service in effecting the changeover, and did not specifically make a request to GTE to terminate that service. Finally, customers may expect to be able to change LSPs in the same manner in which they currently are allowed to change primary interexchange carriers (PICs).

GTE raises the specter of slamming, and the Commission is cognizant of the possibility that slamming will occur in the context of competition between LSPs. However, there are other methods which can be utilized to deal with slamming which would not have discriminatory or anticompetitive effects. Thus, the Commission finds that Sprint should have access to GTE's OSS, including customer account information, on a nondiscriminatory basis. The Commission further finds that GTE should process account changes "as is." GTE has failed to show that "as is" customer changes will result in an increase in slamming. Since "as is" customer changes would allow a customer to switch carriers with a minimum of disruption, it should be permitted.

16. Should Sprint be permitted to request a combination of network elements which would enable it to replicate any services GTE offers for resale?

GTE contends that Sprint should not be permitted to request a combination of network elements which would enable it to replicate services GTE offers for resale, since such a recombination of GTE's unbundled elements would eliminate the distinction in the Act between resale and unbundled elements and allow Sprint to avoid access charges. GTE further contends that use of different methodologies to price unbundled elements and wholesale services would be rendered meaningless, since the differing methodologies serve different purposes. Allowing the recombination of unbundled elements would thus create an opportunity for price arbitrage and discourage the development of facilities-based competition.

Sprint claims that GTE's position on this matter cannot be reconciled with either the Act or the FCC Order. Sprint further submits that GTE has offered no evidence that GTE falls within one of the two exceptions to the requirement that recombination of network elements be allowed, as articulated by the FCC: that the requested combination is technically infeasible, or that the requested combination will impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the ILEC's network. Finally, Sprint states that the Commission is prohibited from making a decision on this issue which is inconsistent with its decision in the AT&T/GTE Arbitration.

OPC maintains that an ILEC should not be able to restrict the ability of a new entrant to fashion leased network elements in a manner which allows it to provide competing service. OPC argues that such restrictions would defeat the benefits of competition -- to create efficient networks and reduce costs. The terms and conditions of the lease should not defeat the purpose of unbundling and should not pose a barrier to entry by creating unreasonable and artificial limitations on the use of elements.

The Act provides, under the heading of "Additional Obligations of Incumbent Local Exchange Carriers," the following:

> Unbundled Access.--The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

§ 251(c)(3). The plain language of the Act requires that the recombination of unbundled network elements be allowed. Where the language of a statute is clear, the Commission will not infer a conflict in the statute. The purported conflict alleged by GTE is not even a necessary interpretation of the statute, since the inclusion of provisions for both the resale of services at wholesale prices under § 251(c)(4) and the availability of unbundled network elements under § 251(c)(3) provides flexibility for the development of competition. This is in keeping with the premise that competition will bring greater efficiencies and decreased prices to the market, which could be hindered if potential competitors are locked into a particular method of doing business. Congress apparently believed that the ability to recombine unbundled network elements would lead to the development of new services.

If GTE's interpretation were correct, it would have been very easy for Congress to have stated that an ILEC "shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements ***with their own facilities*** in order to provide such telecommunications service." The Commission is bound to interpret the Act as it is written, and not as it might have been written. Thus, the Commission finds that GTE's position is in direct conflict with the Act. A CLEC should be able to provide services either through resale or through any technically feasible combination of unbundled network elements. The terms and conditions of the interconnection agreement should not unreasonably restrict Sprint's ability to combine network elements. Sprint should not be prevented from combining purchased network elements to bypass resale offerings.

17. How should the cost of access to OSS be recovered?

This issue was settled by the parties prior to the commencement of the arbitration hearing.

18. Should GTE be required to provide Sprint access to OSS systems through electronic interfaces?

This issue was settled by the parties prior to the commencement of the arbitration hearing.

19. On what basis should OSS electronic interfaces be implemented?

This issue was settled by the parties prior to the commencement of the arbitration hearing.

20. Should the agreement provide for a Most Favored Nation "pick-and-choose" clause?

GTE states that it has agreed to provide Sprint with any fully negotiated contract GTE enters into with another CLEC, and that Sprint's allegation that it be allowed to pick-and-choose particular provisions from various contracts is contrary to the language of § 252(i). GTE adds that Sprint's interpretation would eviscerate one of the principal purposes of the Act, which is to encourage parties to negotiate interconnection agreements. Since each negotiated agreement is a product of give-and-take, GTE submits that any party desiring to obtain the terms of another agreement must abide by the entire agreement.

Sprint claims that the prohibitions against discrimination in the Act require that the Commission make a decision on this issue consistent with that adopted in the AT&T/GTE Arbitration. In that case the Commission abstained from ruling on the pick-and-choose issue because of the Eighth Circuit's stay. In the event that the AT&T outcome is not applied in this proceeding, Sprint recommends the inclusion of a Most Favored Nation clause in its interconnection agreement with GTE. Sprint believes that such a clause will prevent ILECs from providing discriminatory pricing or conditions to preferred CLECs, and allow each new entrant an opportunity to succeed or fail on its own merits.

OPC states that as a result of the stay order of the Eighth Circuit Court of Appeals, this provision is limited in its application. However, to avoid discrimination under the Act, the same terms and conditions should be available from the incumbent.

The Commission finds that there is no need to rule on this issue because of the Eighth Circuit Court of Appeals' stay of the pick-and-choose provision in the FCC's Order.

21. Should GTE geographically deaverage its elements?

GTE does not disagree with the concept of deaveraging, but indicates that geographic deaveraging of unbundled elements should not take place until a uniform and consistent set of pricing policies can be applied to the pricing of all GTE's services, including retail, wholesale and unbundled services. GTE also notes that 47 C.F.R. § 51.507(f) (1996), which requires state commissions to establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences, has been stayed by the Eighth Circuit. GTE stresses that its proposed rates are on an averaged basis for Missouri, and Sprint has not proposed any specific geographically deaveraged rates. Further, GTE proposes that geographic deaveraging be considered in an appropriate forum, which would allow for the consideration of important goals such as universal service and efficient competition.

Sprint requests that the Commission geographically deaverage the rates for unbundled loops consistent with the Commission's decision in the AT&T/GTE Arbitration. Sprint adds that geographic deaveraging is consistent with the pricing policies set forth in the Act.

OPC has not taken a position on this issue.

The Commission finds that in order to make the rates for unbundled elements reflect the cost of providing service, rates should be geographically deaveraged. GTE's cost witness, Richard Bramlet, conceded that costs do vary by geographic zone. The Commission finds, based upon the best information available to it at the present time, that it would be appropriate to set geographically deaveraged interim rates for unbundled loops, with the rates deaveraged into four zones based upon GTE's existing rate groups. The methodology used to deaverage rates for unbundled loops may be reexamined at a later date when the Commission addresses the issue of permanent prices.

22. Does the dialing parity requirement in the statute mandate that GTE move from N11 dialing patterns to business offices and service centers, when such dialing is not also available to all other CLECs?

This issue was settled by the parties prior to the commencement of the arbitration hearing.

23. Should GTE be liable for network fraud caused by GTE's negligence?

GTE argues that it should not be required to provide indemnity to Sprint. GTE claims that Sprint wants GTE to guarantee that Sprint will receive all revenues it expects to receive from traffic, regardless of whether that traffic was generated as a result of network fraud. GTE also asserts that the question is not which party can protect the network, but which party should pay for such protection, or insure itself against loss in the event that such protection is prohibitively expensive or otherwise impractical. Further, GTE stresses that if Sprint wishes to minimize its risk of loss through network fraud by shifting that risk to GTE, then the prices for GTE's services and network elements should be increased to account for the additional risk shifted to GTE.